



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200644031

AUG - 7 2006

SE: T. E. P. R. A. T. 3

Uniform Issue List: 408.01-00

Legend:

Decedent A =

Custodian C =

Amount D =

State F =

Court G =

Date M =

Date N =

Date P =

Date Q =

IRA X =

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative, found in correspondence dated January 19, 2006, concerning the proper treatment of a distribution from Decedent A's individual retirement Account ("IRA") (IRA X) under section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated July 14, 2006, supplemented the request.

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Your authorized representative has submitted the following facts and representations in support of your ruling request:

Decedent A was born on Date M, 1927, and died on Date N, 2005, while a resident of State F after attaining age 70 ½. Your date of birth is Date P, 1928. You were married to Decedent A at the time of his death. Decedent A died testate. At the time of his death, Decedent A maintained an individual retirement account (IRA) ("IRA X") with Custodian C. The beneficiary designation on file with Custodian C listed the estate of Decedent A as the beneficiary. As of the date of the death of Decedent A, the value of IRA X was Amount D.

By decree dated Date Q, 2005 the Last Will and Testament of Decedent A was admitted to probate by Court G and you were appointed as the sole executrix of the Estate of Decedent A.

Under Articles Third and Fourth of his will, all of Decedent A's tangible and personal property and his interest in a personal residence are left to you, his surviving spouse. Under Article Fifth of the will, substantial cash bequests are left to family members and certain charities. You represent that the estate has sufficient assets to pay all of the cash bequests, as well as any death taxes, administrative expenses and debts of Decedent A, without using the assets in IRA X. Under Article Sixth of the will, the residue of the estate is left solely to you, outright and absolutely. Pursuant to Article Eleventh, paragraph 5, you, as fiduciary have the power to make non pro-rata and in-kind distributions.

You, as the sole executor of Decedents A's estate, intend to allocate all of Decedent A's interest in IRA X to his residuary estate and, therefore, to yourself as the sole residuary beneficiary. As executrix of the estate, and in accordance with instructions from yourself as the sole residuary beneficiary, you intend to then cause the IRA X account balance to be transferred to an IRA set up and maintained in your name for your sole benefit. Such transfer will be effected by redesignating IRA X as an IRA set up and maintained in your name.

Based on the above facts and representations, you, through your authorized representative, request the following rulings:

1. That you, as the surviving spouse, are be the distributee of IRA X and the individual for whose benefit the account is maintained after the death of Decedent ("beneficiary") for purposes of section 408(d)(3)(A) of the Code.
2. That IRA X, which will be transferred to an IRA set up an maintained in your name, will not be an inherited IRA within the meaning of section 408(d)(3) of the Code, with respect to you.

3. That, pursuant to section 408(d)(3) of the Code, you will not be required to include in income for the year in which any amount which is transferred from IRA X to an IRA set up and maintained in your name, other than (a) required minimum distributions (made in accordance with sections 401(a)(9) and (b) and any other amounts actually distributed from either IRA X or your rollover IRA to you, which are not timely rolled over or which are described in section 408(d)(3)(B) of the Code.

With respect to your ruling requests section 408(d)(1) of the Code provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3) of the Code provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Section 408(d)(3)(A)(i) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Section 408(d)(3)(B) of the Code provides, generally, that Code subsection 408(d)(3)(A)(1) does not apply to a distribution received from an IRA if at any time during the 1-year period ending on the date of receipt the receiving individual received any other amount described in said Code subsection which was not includible in his gross income because of the application of said subsection.

Section 408(d)(3)(C)(i) of the Code provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

On April 17, 2002, Final Income Tax Regulations ("regulations") were published in the Federal Register with respect to sections 401(a)(9) and 408(a)(6) of the Code. (See also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the regulations, Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

Although not specifically stated in the regulations, a surviving spouse may not elect to treat the IRA of a decedent as his/her own if an estate is the beneficiary of the IRA even if the spouse is both the sole executor of the estate and also the sole beneficiary of the estate.

The Preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

In this case, the IRA X account balance remaining at Decedent A's death was payable to Decedent A's estate. Pursuant to the terms of Decedent A's last will, the residue of the estate, which includes IRA X, is to be paid to you as sole residuary beneficiary thereof. As sole executrix of Decedent A's estate, you will cause the IRA X proceeds to be paid to you as beneficiary thereof. You then will cause the IRA X proceeds to be transferred into an IRA set up and maintained in your name by means of IRA X being recharacterized into such an IRA.

The facts above indicate that you are the sole beneficiary of Decedent A's estate and the sole residuary beneficiary thereof. Thus, upon Decedent A's death, pursuant to his will, you had the authority to pay yourself all of Decedent A's residuary estate including IRA X. Thus, no third party had any authority to preclude your receiving Decedent A's IRA X. Under the facts stated above, it is appropriate to treat you as the payee and beneficiary of IRA X for purposes of sections 408(d)(1) and 408(d)(3) of the Code.

Thus, with respect to your ruling requests, we conclude as follows:

1. That you, as the surviving spouse, are the distributee of IRA X and the individual for whose benefit the account is maintained for purposes of section 408(d)(3)(A) of the Code.

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2. That IRA X, which will be transferred to an IRA set up and maintained in your name, will not be an inherited IRA within the meaning of section 408(d)(3) of the Code with respect to you.
3. That, pursuant to section 408(d)(3) of the Code, you will not be required to include in income for the year in which any amount which is transferred from IRA X to an IRA set up and maintained in your name, other than (a) required minimum distributions (made in accordance with sections 401(a)(9) and (b) and any other amounts actually distributed from either IRA X or your rollover IRA to you, which are not timely rolled over or which are described in section 408(d)(3)(B) of the Code.

This ruling letter assumes that IRA X either is or was qualified under section 408(a) of the Code at all times relevant thereto. It also assumes that the rollover IRA into which you will roll over part or all of the IRA X distribution will also meet the requirements of section 408(a) at all times relevant thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

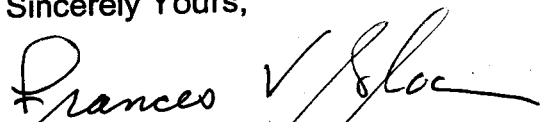
Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call
(not a toll free number).

(ID) at () -

Sincerely Yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose
Deleted Copy of Ruling

CC: